A

KEMPAS EDIBLE OIL SDN BHD v. PRABDHIAL SINGH DARDARA SINGH

COURT OF APPEAL, PUTRAJAYA
MOHD HISHAMUDIN YUNUS JCA
HAMID SULTAN ABU BACKER JCA
B UMI KALTHUM ABDUL MAJID JCA
[CIVIL APPEAL NO: W-02-397-02-2014]
6 MARCH 2015

C ***ADMINISTRATIVE LAW:*** *Judicial review – Certiorari – High Court allowed order of certiorari to quash award by Industrial Court – Appeal against – Whether Industrial Court acted within scope of its jurisdiction – Whether Industrial Court bound by a Sessions Court decision in acquitting respondent from any corrupt offences – Whether proceedings before Sessions Court relevant to proceedings before Industrial Court – Whether High Court erred and departed from established* D *principles of law – Whether approach taken by Industrial Court consistent with exercise of its functions – Industrial Relations Act 1967, s. 30(5)*

LABOUR LAW: *Industrial court – Dispute over wrongful dismissal – Whether Industrial Court failed to take into account relevant matters – Whether Industrial Court acted within scope of its jurisdiction – Whether Industrial Court bound by* E *Sessions Court decision in acquitting respondent from any corrupt offences – Whether proceedings before Sessions Court irrelevant to the proceedings before the Industrial Court – Whether High Court had erred and departed from established principles of law – Whether approach taken by Industrial Court consistent with exercise of its functions – Industrial Relations Act 1967, s. 30(5)*

F

The respondent was employed by the appellant company ('the appellant') in 1994 and during his tenure of employment he was frequently rewarded with bonus payments and promotions. However, in the year 2002, there was a complaint made to the appellant that the respondent had been demanding bribes. A business entity called 'Zulfida Enterprise' had entered into a G contract with the appellant to supply contract workers to the latter. The factory manager of the appellant, one Mohan Kittu, had allegedly received a letter from one Zulfakar that if he did not accord the respondent RM1,500 monthly, the appellant would engage the services of another business entity for the supply of contract workers. The respondent was arrested by the Anti H Corruption Agency ('ACA') in respect of offences pertaining to corruption but was subsequently released on bail. By a letter dated 1 November 2002, the appellant suspended the respondent with full pay. After the suspension, the appellant did not carry out any investigation against the respondent for any misconduct; nor was any domestic inquiry held. On 6 January 2003, the I respondent was issued with a termination letter. On 25 September 2003, the respondent was charged in the Sessions Court for two offences under s. 11(a) of the Anti Corruption Act 1997. The Sessions Court Judge acquitted the respondent, ruling that the prosecution had failed to establish a *prima facie*

case against the respondent on the charges. In making the decision, the Sessions Court found that the witnesses Mohan Kittu and Zulfakar were unworthy of credit and rejected their evidence. In the meantime, the respondent made a representation for wrongful dismissal to the Director General of Industrial Relations and thereafter, the respondent's case was referred by the Minister of Human Resources to the Industrial Court pursuant to s. 20(3) of the Industrial Relations Act 1967 ('Act'). The Industrial Court in its award concluded that the appellant had proved on a balance of probabilities that the respondent's termination was justified and thus dismissed the respondent's claim. Dissatisfied with the said decision, the respondent applied to the High Court, by way of judicial review, for an order of *certiorari* to quash the said award. The High Court, in allowing the respondent's application, ruled that the Industrial Court had erred by failing to take into consideration relevant matters in arriving at its decision, which were, *inter alia,* that (i) the respondent's service was terminated without any domestic inquiry; (ii) the termination of service was based merely on the fact of the respondent being arrested by the ACA; (iii) the appellant had failed to conduct any investigation before coming to a decision to dismiss the respondent; and (iv) the respondent had been acquitted by the Sessions Court which decision had been upheld by the High Court and the Court of Appeal. Dissatisfied with the decision of the High Court, the appellant appealed.

Held (allowing appeal with costs; setting aside order of the High Court) Per Hishamudin Yunus JCA delivering the judgment of the court:

(1) The High Court Judge in examining the procedural aspect of the decision making process adopted by the appellant (the employer) in arriving at the decision to terminate the employment of the respondent (the employee) had departed from established principles of law as laid down in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* and *Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi*. It was the statutory function of the Industrial Court to determine, firstly, whether the appellant was able to establish to the satisfaction of the Industrial Court the reason for the dismissal of the respondent; and, secondly, whether such reason constituted sufficient cause for the dismissal. The Industrial Court had no jurisdiction to vitiate or nullify the dismissal merely because there was failure on the part of the employer to notify the employee the nature of the alleged misconduct or to hold a domestic inquiry. The Industrial Court in the present case had acted within the scope of its jurisdiction, and had considered the evidence and the facts presented before it and had arrived at a finding that the appellant was able to establish a valid reason for the respondent's dismissal; that the respondent had over a span of time indulged in corrupt practices. (paras 29, 36 & 37)

(2) The respondent had taken the position that the Industrial Court ought to be bound by the decision of the Sessions Court (upheld by the High Court and the Court of Appeal) which had acquitted the respondent. However, this court was of the view that the Industrial Court had correctly stated the law that (i) it was not bound by the findings of the Sessions Court; and that (ii) the proceedings in the Sessions Court was irrelevant to the Industrial Court proceedings. The proceedings before the Sessions Court were criminal in nature and the applicable standard of proof was that of beyond reasonable doubt, which was different from that before the Industrial Court which was on a balance of probabilities. The approach taken by the Industrial Court herein was consistent with the exercise of its function as prescribed by the Industrial Relations Act 1967 in having to determine for itself, in accordance with its own legal standards as prescribed by s. 30(5) of the Act, whether the appellant had established a valid reason for the respondent's dismissal. (para 42)

(3) The High Court Judge had overlooked the fact that if the Industrial Court had considered itself bound by the findings of the Sessions Court or guided by those findings, then it would have failed to discharge its function, that was, making its own findings based on the evidence adduced before it and in compliance with s. 30(5) of the Act. Whatever were the findings of the Sessions Court, they could not, as a matter of law, be taken to be the parameters within which the Industrial Court was called upon to exercise its functions. (para 43)

Bahasa Malaysia *Translation Of Headnotes*

Responden telah diambil bekerja untuk syarikat perayu ('perayu') pada tahun 1994 dan semasa tempoh pekerjaannya dia telah diberi ganjaran dengan pembayaran bonus dan promosi. Walau bagaimanapun, pada tahun 2002, perayu telah menerima aduan bahawa responden telah meminta rasuah. Sebuah entiti perniagaan yang dikenali sebagai 'Zulfida Enterprise' telah memasuki satu kontrak dengan perayu untuk pembekalan pekerja-pekerja kontrak kepadanya. Pengurus kilang perayu, seorang yang bernama Mohan Kittu, dikatakan telah menerima sepucuk surat daripada seorang yang bernama Zulfakar bahawa kalau dia tidak memberi responden RM1,500 sebulan, perayu akan mendapatkan khidmat satu lagi entiti perniagaan untuk bekalan pekerja kontrak. Responden telah ditahan oleh Agensi Anti Rasuah ('ACA') atas kesalahan rasuah tetapi kemudiannya dilepaskan atas jaminan. Melalui surat bertarikh 1 November 2002, perayu telah menggantung responden dengan gaji penuh. Selepas penggantungan tersebut, perayu tidak menjalankan apa-apa siasatan terhadap responden bagi apa-apa salah laku; dan tiada siasatan domestik dilaksanakan. Pada 6 Januari 2003, responden telah diberikan surat penamatan kerja. Pada 25 September 2003, responden telah dipertuduh dalam Mahkamah Sesyen atas dua kesalahan di bawah s. 11(a) Akta Pencegahan Rasuah 1997. Hakim Mahkamah Sesyen telah membebaskan responden, dengan memutuskan bahawa pihak pendakwaan telah gagal membuktikan kes *prima facie* terhadap responden atas pertuduhan-

pertuduhan. Dalam mencapai keputusan, Mahkamah Sesyen mendapati bahawa saksi-saksi iaitu Mohan Kittu dan Zulfakar tidak layak dipercayai dan menolak keterangan mereka. Pada masa yang sama, responden membuat representasi untuk pemecatan salah kepada Ketua Pengarah Perhubungan Perusahaan dan kemudiannya, kes responden telah dirujuk oleh Menteri Sumber Manusia kepada Mahkamah Perusahaan di bawah s. 20(3) Akta Perhubungan Perusahaan 1967 ('Akta'). Mahkamah Perusahaan dalam awardnya memutuskan bahawa perayu telah membuktikan atas imbangan kebarangkalian bahawa pemecatan kerja responden adalah wajar dan dengan itu menolak tuntutan responden. Tidak berpuas hati dengan keputusan tersebut, responden memohon kepada Mahkamah Tinggi, melalui semakan kehakiman, untuk perintah *certiorari* bagi membatalkan award tersebut. Mahkamah Tinggi, dalam membenarkan permohonan responden, memutuskan bahawa Mahkamah Perusahaan telah terkhilaf dalam kegagalannya untuk mengambil dalam pertimbangan perkara-perkara relevan apabila mencapai keputusannya, iaitu, antara lain bahawa (i) perkhidmatan responden telah ditamatkan tanpa menjalankan siasatan domestik; (ii) penamatan perkhidmatan adalah berdasarkan fakta bahawa responden telah ditahan oleh pihak ACA; (iii) perayu telah gagal melaksanakan apa-apa siasatan sebelum membuat keputusan untuk menamatkan perkhidmatan responden; dan (iv) responden telah dibebaskan oleh Mahkamah Sesyen yang keputusannya telah disahkan oleh Mahkamah Tinggi dan Mahkamah Rayuan. Tidak berpuas hati dengan keputusan Mahkamah Tinggi itu, perayu merayu.

Diputuskan (membenarkan rayuan dengan kos; mengenepikan perintah Mahkamah Tinggi)

Oleh Hishamudin Yunus HMR menyampaikan penghakiman mahkamah:

(1) Hakim Mahkamah Tinggi dalam memeriksa aspek prosedur proses membuat keputusan yang digunapakai oleh perayu (majikan) dalam mencapai keputusan untuk menamatkan pekerjaan responden (pekerja) telah menyimpangi prinsip-prinsip yang mantap seperti yang telah dibentangkan dalam *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* dan *Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi*. Ia adalah fungsi statutori Mahkamah Perusahaan untuk memutuskan, pertama sekali, sama ada perayu dapat membuktikan kepada kepuasan Mahkamah Perusahaan alasan penamatan pekerjaan responden; dan, kedua, sama ada alasan yang diberikan adalah sebab yang mencukupi untuk pemecatan itu. Mahkamah Perusahaan tidak mempunyai bidang kuasa untuk membatalkan pemecatan itu hanya kerana terdapat kegagalan dari pihak majikan untuk memberitahu pekerja itu berkenaan sifat salah laku yang didakwa atau kegagalan menjalankan siasatan domestik. Mahkamah Perusahaan dalam kes ini telah bertindak dalam skop bidang kuasanya, dan telah mempertimbangkan keterangan dan fakta-fakta yang telah

dibentangkan di hadapannya dan telah mendapati bahawa perayu telah berjaya membuktikan alasan yang kukuh untuk pemecatan responden; bahawa responden telah dalam satu jangka masa mengambil bahagian dalam amalan rasuah.

(2) Responden telah mengambil pendirian bahawa Mahkamah Perusahaan harus diikat dengan keputusan Mahkamah Sesyen (yang telah disahkan oleh Mahkamah Tinggi dan Mahkamah Rayuan) yang telah membebaskan responden. Walau bagaimanapun, mahkamah ini berpendapat bahawa Mahkamah Perusahaan telah dengan betul menyatakan undang-undang bahawa (i) ia tidak terikat dengan dapatan Mahkamah Sesyen; dan (ii) prosiding Mahkamah Sesyen adalah tidak relevan kepada prosiding Mahkamah Perusahaan. Prosiding di hadapan Mahkamah Sesyen adalah bersifat jenayah dan standard pembuktian yang terpakai adalah melampaui keraguan munasabah, iaitu berlainan dengan standard pembuktian di hadapan Mahkamah Perusahaan iaitu atas imbangan kebarangkalian. Pendekatan yang diambil oleh Mahkamah Perusahaan di sini adalah konsisten dengan pelaksanaan fungsinya seperti yang diperuntukkan oleh Akta Perhubungan Perusahaan 1967 dalam menentukan untuk dirinya sendiri, mengikut standard undang-undangnya sendiri seperti yang ditetapkan oleh s. 30(5) Akta, sama ada perayu telah membuktikan alasan yang sahih untuk pemecatan responden.

(3) Hakim Mahkamah Tinggi telah terlepas pandang hakikat bahawa jika Mahkamah Perusahaan telah menganggap dirinya terikat dengan dapatan-dapatan Mahkamah Sesyen atau telah berpandukan dapatan-dapatan itu, ia akan gagal menunaikan fungsinya, iaitu, membuat penemuan sendiri berdasarkan keterangan yang dikemukakan di hadapannya dan mematuhi s. 30(5) Akta. Apa-apa dapatan Mahkamah Sesyen, mereka tidak boleh, sebagai perkara undang-undang, diambil sebagai parameter di mana Mahkamah Perusahaan dipanggil untuk menjalankan fungsinya.

Case(s) referred to:

Dreamland Corp (M) Sdn Bhd v. Choong Chin Sooi & Industrial Court of Malaysia [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39 SC ***(refd)***

Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 1 LNS 30 FC ***(refd)***

Malaysian Airline System Bhd v. Airline Workers' Union, Sarawak [1983] 1 ILR 238 IC ***(refd)***

Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449 FC ***(refd)***

Taiko Plantations Sdn Bhd, Negeri Sembilan v. Ragawan Raman Nair & Anor [1994] 2 ILR 75 IC ***(refd)***

Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal [1995] 3 CLJ 344 FC ***(refd)***

Legislation referred to:

Anti-Corruption Act 1997, s. 11(a)

Industrial Relations Act 1967, ss. 20(3), 30(5)

For the appellant - Suganthi Singam (Nadia Abu Bakar with her); M/s Shearn Delamore & Co

For the respondent - David Peter (Ang Wei Chao with him); M/s Jerald Gomez & Assocs

[Appeal from High Court, Kuala Lumpur; Judicial Review No: 25-79-04-2013]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Hishamudin Yunus JCA:

Introduction

[1] We heard submissions on Tuesday 4 November 2014. We informed parties that we will deliver judgment today (Friday 6 March 2015). We now do so.

[2] We are allowing the appeal with costs. Our decision is unanimous.

[3] The order of the High Court is set aside and the award of the Industrial Court is restored.

[4] In our judgment, the learned High Court Judge erred in law in allowing the respondent's application for judicial review to issue a writ of *certiorari* to quash the award of the Industrial Court that was in favour of the appellant.

Background Facts

[5] The respondent, Mr Prabdhial Singh a/l Dardara Singh, began his employment with the appellant, a company named Kempas Edible Oil Sdn Bhd, on 16 May 1994 as a safety officer. During his tenure of employment with the company he was frequently rewarded with bonus payments, and was thrice promoted.

[6] However, in the year 2002 there was a complaint made to the appellant that the respondent had been demanding bribes. A business entity called 'Zulfida Enterprise' had entered into a contract with the appellant company to supply contract workers to the latter. What was alleged was that sometime in October 2002, the factory manager of the appellant, one Mohammad Mohan Kittu, received a letter dated 14 October 2002 from one Zulfakar bin Jema'at, the owner of Zulfida Enterprise that if he (Zulfakar) did not accord the respondent RM1,500 monthly, the appellant company would engage the services of another business entity for the supply of contract workers.

[7] The respondent was arrested by the Anti-Corruption Agency (ACA) on 31 October 2002 in respect of offences pertaining to corruption, but was subsequently released on bail. On the same day itself (31 October 2002) the appellant was notified by an ACA officer that the reason the respondent was

A arrested was due to the monthly RM1,500 payment required to be given to the respondent as a means of ensuring that other contractors were not engaged by the appellant to supply contract workers to the appellant.

[8] By a letter dated 1 November 2002 the appellant suspended the respondent with full pay. The only reason given by the appellant for the B suspension was merely the fact that he had been arrested by the ACA and that:

> The Company views such incidents with great concern and due to the seriousness of this matter ...

C **[9]** The letter did not state what was the misconduct that the respondent was alleged to have committed. The letter of suspension reads.

> STRICTLY PRIVATE & CONFIDENTIAL
>
> 1 November 2002
>
> D Mr Prabdhial Singh Dhillon
> 5627, Jalan SJ 5/5
> Taman Seremban Jaya
> 70450 Seremban
> NEGERI SEMBILAN
>
> E Dear Sir
>
> SUSPENSION FROM WORK
>
> It has been reported that you were arrested by the Anti-Corruption Agency (ACA) yesterday (31st October 2002) and subsequently released on bail by the said ACA.
>
> F The company views such incidents with great concern and due to the seriousness of this matter, you are hereby suspended from work with full pay with immediate effect until further notice. You are hereby barred from entering company's premises at Kempas Edible Oil Sdn Bhd and you are no longer authorised to act on company's behalf in any manner whatsoever until such time you are advised otherwise.
>
> G Please acknowledge your acceptance and understanding of the contents of this letter by signing below and returning the duplicate to the undersigned.
>
> Yours sincerely
>
> H CONSOLIDATED PLANTATIONS BERHAD GROUP OF COMPANIES
>
> Sgd
>
> IWAN ASMADY
>
> I General Manager - Human Resources

[10] After the suspension, the appellant did not carry out any investigation against the respondent for any misconduct; nor was any domestic inquiry held. The respondent was not issued with any show cause letter.

[11] Then, on 6 January 2003, the respondent was issued with a termination letter. The letter states: A

STRICTLY PRIVATE & CONFIDENTIAL

6th January 2003 A.R. REGISTERED

Mr Prabdhial Singh Dhillon B
5627, Jalan SJ 5/5
Taman Seremban Jaya
70450 Seremban
NEGERI SEMBILAN

Dear Sir C

TERMINATION OF EMPLOYMENT

We wish to refer to our letter dated 1 November 2002 and wish to inform you that after our review of your recent misconduct which lead to your arrest by the Anti-Corruption Agency on 31 October 2002, your services with Kempas Edible Oil Sendirian Berhad is hereby terminated with D immediate effect.

Please acknowledge your acceptance and understanding of the contents of this letter by signing below and returning the duplicate to the undersigned.

Your sincerely E

CONSOLIDATED PLANTATIONS BERHAD GROUP OF COMPANIES

IWAN ASMADY

General Manager - Human Resources F

cc Managing Director - Consolidated Plantations Berhad

Director - Foods Division

Financial Controller - Consolidated Plantations Berhad

Factory Manager - KEO Refinery G

[12] It is to be observed that the above letter of termination is vague: it only mentioned 'recent misconduct'. The nature of the alleged 'recent misconduct' was not spelt out.

[13] At the time of his dismissal, the respondent was the Assistant Human H Resources Manager in the appellant. He was drawing a monthly salary of RM3,409.

[14] Some eight months later, on 25 September 2003 the respondent was charged in the Sessions Court of Johor Bahru for two offences under s. 11(a) of the Anti-Corruption Act 1997. The appellant was informed of this fact by I the Anti-Corruption Agency by a letter issued to the appellant on the same date. Together with the letter, the appellant was also given copies of the charge sheet. The charges against the respondent are as follows:

A Charge 1

Bahawa kamu pada 17 Oktober 2002 jam lebih kurang 2.00 petang di Maybank Cawangan Pusat Bandar Pasir Gudang di dalam Daerah Johor Bahru dalam Negeri Johor, sebagai seorang ejen iaitu Penolong Pengurus Sumber Manusia, Kempas Edible Oil Sdn. Bhd. telah secara rasuah
B memperoleh daripada Zulfakar Bin Jema'at pemilik Zulfida Enterprise suatu suapan iaitu cek Affin Bank Berhad No. 105864 bernilai RM1,500.00 sebagai upah bagi melakukan suatu perkara berhubung hal-ehwal prinsipal kamu, iaitu menentukan kontrak membekal pekerja oleh Zulfida Enterprise kepada Kempas Edible Oil Sdn. Bhd. tidak dibatalkan dan dengan itu, kamu telah melakukan kesalahan di bawah seksyen 11(a) Akta
C Pencegahan Rasuah 1997 (Undang-Undang Malaysia Akta 575) dan boleh dihukum di bawah seksyen 16 Akta yang sama.

Charge 2

Bahawa kamu pada 31 Oktober 2002 jam lebih kurang 1.30 tengahari di U & Me Café, Jalan Bayan, Taman Bunga Raya, Masai di dalam Daerah
D Johor Bahru, sebagai seorang ejen iaitu Penolong Pengurus Sumber Manusia, Kempas Edible Oil Sdn. Bhd. telah secara rasuah memperoleh daripada ZULFAKAR BIN JEMA'AT pemilik Zulfida Enterprise suatu suapan iaitu wang tunai bernilai RM1,500.00 sebagai upah bagi melakukan suatu perkara berhubung hal-ehwal prinsipal kamu, iaitu, menentukan
E kontrak membekal pekerja oleh Zulfida Enterprise kepada Kempas Edible Oil Sdn. Bhd., tidak dibatalkan dan dengan itu, kamu telah melakukan kesalahan di bawah seksyen 11(a) Akta Pencegahan Rasuah 1997 (Undang-Undang Malaysia Akta 575) dan boleh dihukum di bawah seksyen 16 Akta yang sama.

[15] The respondent claimed trial to the above charges. At the trial the
F main witnesses for the prosecution were Zulfakar and Mohammad Mohan Kittu. The latter was at the material time the respondent's immediate superior in the appellant company.

[16] On 11 January 2010, the learned Sessions Court Judge, at the close of
G the case for the prosecution, acquitted the respondent, ruling that the prosecution had failed to establish a *prima facie* case against the respondent on the charges. In making the decision, the Sessions Court found that both Mohammad Mohan Kittu and Zulfakar were unworthy of credit and rejected their evidence.

H **[17]** The prosecution appealed to the High Court but the appeal was dismissed. The prosecution then appeal to the Court of Appeal, but this was also dismissed. The decision of the Sessions Court was affirmed.

[18] In the meantime, the respondent made a representation for wrongful dismissal to the Director General of Industrial Relations; and, thereafter, on
I 2 August 2004 the respondent's case was referred by the Minister of Human Resources to the Industrial Court pursuant to s. 20(3) of the Industrial Relations Act 1967.

[19] Hearing before the Industrial Court commenced on 11 February 2009. A

[20] The award – Award No. 106 of 2013 – was handed down on 11 January 2013. The Industrial Court in its award concluded that the appellant had proved on a balance of probabilities that the respondent's termination was justified and thus dismissed the respondent's claim.

B

The Reasoning Of The Industrial Court

[21] The Industrial Court in its award had alluded to the appellant's reasons for dismissing the respondent, as disclosed by the evidence before the court. It states in the award:

C

> Reasons for Dismissal
>
> COW-2, Iwan Asmady who was the General Manager Human Resources at that time testified that at the time the Letter of Termination was issued, the Company was aware of the following facts:
>
> (i) *Via* letter dated 14 October 2002, COW-3, Zulfakar had informed the Company that he had been threatened by the Claimant that if he did not accord the Claimant with RM1,500.00 every month, the Claimant would engage the services of another contractor for the supply of contract workers.
>
> (ii) COW-3 had also accorded the Company with a cheque deposit receipt as well as a clearance slip which confirmed that he had accorded the Claimant with the said sum the Claimant had requested.
>
> (iii) At the material time, the Company did not see any reason to doubt the complaint by COW-3, more so in view of the fact that he was able to substantiate his complaint by according the Company with the cheque deposit as well as a clearance slip.
>
> (iv) Besides the foregoing documentary evidence, the then Factory Manager, Mohammad Mohan Kittu (COW-1), had also spoken with COW-3 on numerous occasions in respect of this matter wherein COW-3 confirmed that this matter had been taking place for a while.
>
> (v) The Management also observed that in view of the position which the Claimant held at that material time, the Claimant was in position to influence the Company's decision as to whether the Company should continue or renew its existing agreement with COW-3's company, Zulfida Enterprise for the supply of contract workers.
>
> (vi) The ACA had also informed the Company that they had arrested the Claimant because they had actually seen the Claimant receiving the sum of RM1,500.00 from COW-3 on 31 October 2002 at a café in Johor Bahru. The Company were also informed by the ACA that after receiving the complaint from COW-3, the ACA together with COW-3 had worked closely together to determine the truth of COW-3's allegation against the Claimant.

D

E

F

G

H

I

A In view of the above considerations, the Management concluded that they could no longer repose the necessary trust and confidence in the Claimant to carry out his duties and responsibilities in a faithful and diligent manner as there are more than reasonable grounds for the Company to suspect that the Claimant whilst discharging his duties as the Assistant Human Resources Manager was involved in corrupt practices. As a result, the Company terminated the Claimant's employment *via* letter dated 6 January 2003 with immediate effect.

[22] The Industrial Court in its award then made the following findings:

Based on the above evidence by the company's witnesses there was reasonable grounds for believing that the offence put against the employee was in fact committed. The following facts show that there were convincing and cogent evidence to believe that the claimant was involved in corrupt practices i.e.:

(i) COW-1 evidence that COW-3 informed him and also the Managing Director Mr. Yap that the claimant had demanded a payment of RM1,500.00 per month in order for COW-3 to continue with his contract to supply workers to the company.

(ii) Documentary evidence i. e. the letter dated 14 October 2002 by COW-3 and also the cheque deposit receipt as well as a clearance slip under the Claimant's account number.

(iii) COW-2 had received the information from an ACA officer that the Claimant has been arrested for receiving corruption money in the sum of RM1,500.00 from COW-3. He was later released on bail pending investigation by the ACA. The arrest was related to his work as the Assistant Human Resources Manager of the Company.

(iv) The ACA officers also visited the Company in the course of their investigation and seized COW-3's letter dated 14 October 2002 on 24 December 2002, the original agreement between the Company and Zulfida Enterprise on 31 October 2002 and the Claimant's Personal File on 1 January 2003.

All the above facts were considered by the Management of the Company before they decided to terminate the Claimant's services with the Company. The Court is of the view that after considering all the above facts and also the evidence of all the witnesses, there are cogent and convincing evidence to dismiss the Claimant from his employment with the Company.

[23] The respondent, dissatisfied with the award of the Industrial Court, applied to the High Court, by way of judicial review, for an order of *certiorari* to quash the award.

The Decision Of The High Court

[24] On 23 January 2014 the High Court, having heard submissions of parties on the judicial review application, issued an order of *certiorari* to quash the Industrial Court's award and declared that the dismissal of the

respondent by the appellant was without just cause or excuse and the case be remitted to the Industrial Court to determine the appropriate relief to be given to the respondent by the appellant.

[25] The learned High Court Judge ruled that the Industrial Court had erred by failing to take into consideration relevant matters in arriving at its decision; the relevant matters being that the respondent's service was terminated without any domestic inquiry; that the termination of service was based merely on the fact of being arrested by the Anti-Corruption Agency (ACA); that the appellant had failed to conduct any investigation before coming to a decision to dismiss the respondent; that the respondent had been acquitted by the Sessions Court, which decision had been upheld by the High Court and the Court of Appeal; and that the Sessions Court had found Zulfakar and Mohammad Mohan Kittu not to be credible witnesses.

[26] Dissatisfied with the decision of the High Court, the appellant filed a notice of appeal to the Court of Appeal on 20 February 2014.

Decision Of The Court

[27] In our judgment, the learned High Court Judge, with respect, erred in holding that the Industrial Court in arriving at its decision had failed to take into account relevant considerations as enumerated above.

[28] We have examined in detail the relevant passages in the award of the Industrial Court, but with respect we find no basis for the High Court to quash the award.

On The Failure To Hold A Domestic Inquiry

[29] In our view, in the present case, we agree with the submission by the learned counsel for the appellant that the learned High Court Judge, with respect, in examining the procedural aspect of the decision making process adopted by the appellant (the employer) in arriving at the decision to terminate the employment of the respondent (employee) had departed from established principles of law as laid down in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* [1995] 3 CLJ 344; [1995] 2 MLJ 753 and *Dreamland Corp (M) Sdn Bhd v. Choong Chin Sooi & Industrial Court of Malaysia* [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39; [1988] 1 MLJ 34.

[30] It is to be recalled that the jurisdiction of the Industrial Court is conferred by the Minister's reference under s. 20 of the Industrial Relations Act 1967.

[31] Section 30(5) of the Industrial Relations Act 1967 provides that:

> (5) The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

[32] The function of the Industrial Court when hearing such reference has been clearly explained by Raja Azlan Shah CJ (Malaya) (as he then was) in the Federal Court case of *Goon Kwee Phoy v. J & P Coats (M) Bhd* [1981] 1 LNS 30; [1981] 2 Ch 149. In this case cited, the learned Chief Judge (Malaya) said (at p. 136):

> Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of that court to determine whether the termination or dismissal is with or without just cause or excuse. If the employer chooses to give a reason for the action taken by him, the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out. If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. The proper enquiry of the court is the reason advanced by it and that court or the High Court cannot go into another reason not relied on by the employer or find one for it.

[33] 14 years later *Goon Kwee Phoy* was cited with approval by the Federal Court in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* [1995] 2 MLJ 753. In this case cited, Mohd Azmi FCJ having quoted *Goon Kwee Phoy* said (at p. 762):

> On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under s. 20 of the Act (unless otherwise lawfully provided by the terms of the reference), is to determine whether the misconduct or irregularities complained of by the management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal.

[34] And subsequently in *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 4 CLJ 449 the Federal Court likewise held (at p. 455):

> As pointed out by this Court recently in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal* [1995] 3 CLJ 344; [1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold, firstly, to determine whether the misconduct complained of by the employer has been established, and secondly whether the proven misconduct constitutes just cause or excuse for the dismissal. Failure to determine these issues on the merits would be a jurisdictional error which would merit interference by *certiorari* by the High Court. Further, the Industrial Court would be acting in excess of jurisdiction if it changed the scope of the reference by substituting its own reason, that is to say a reason not relied upon by the employer for the dismissal.

[35] In *Wong Yuen Hock* the brief facts were that it was an unwritten rule of the company (Hong Leong Assurance Sdn Bhd), an insurance company, that staff are prohibited from purchasing wrecks. Rumours were floating around that the claimant in that case, Wong Yuen Hock, who was the claims manager of the company at the material time, had purchased the wreck of

a luxurious Mercedes Benz insured with the company without the knowledge of the company. The claimant was sacked without eliciting an explanation from him or affording him the right to be heard in a domestic inquiry, this being one of the terms and conditions of his contract of employment. On the issue regarding the failure on the part of the employer to hold a domestic inquiry, Mohd Azmi FCJ, at a later part of the judgment in *Wong Yuen Hock*, added (at p. 767):

> It was not within the ambit of the reference for the Industrial Court to determine whether Hong Leong ought to be punished for failing to hold a domestic inquiry. The Industrial Court was not competent to declare the dismissal void for failure to comply with the rules of natural justice. The very purpose of the inquiry before the Industrial Court was to give both parties to the dispute an opportunity to be heard irrespective of whether there was a need for the employer to hold a contractual or statutory inquiry. We were confident that the Industrial Court as constituted at present was capable of arriving at a fair result by fair means on all matters referred to it. If therefore there had been a procedural breach of natural justice committed by the employer at the initial stage, there was no reason why it could not be cured at the re-hearing by the Industrial Court.

[36] Reverting to the present case, on the authorities, we hold that it was the statutory function of the Industrial Court to determine, firstly, whether the appellant was able to establish to the satisfaction of the Industrial Court the reason for the dismissal of the respondent; and, secondly, whether such reason constituted sufficient cause for the dismissal. The Industrial Court had no jurisdiction to vitiate or nullify the dismissal merely because there was failure on the part of the employer to notify the employee the nature of the alleged misconduct or to hold a domestic inquiry.

[37] In the present case, it is not disputed that the respondent at the time of the dismissal was not informed of the nature of the alleged misconduct. It is also not disputed that no domestic inquiry was held. But the respondent had brought his claim for wrongful dismissal to the Industrial Court. And the Industrial Court on its part, acting within the scope of its jurisdiction, had considered the evidence and the facts presented before it and had arrived at a finding that the appellant was able to establish a valid reason for the respondent's dismissal: that the respondent had over a span of time indulged in corrupt practices that involved Zulfakar and the appellant's business dealing with Zulfida Enterprise, as explained by the Industrial Court in its award.

The Relevance Of The Sessions Court Proceedings

[38] Another reason for the learned High Court Judge to quash the award of the Industrial Court was the failure on the part of the Industrial Court to take into consideration the fact that the Sessions Court had acquitted the respondent on the two charges of corruption and the findings of the learned Sessions Court Judge that Zulfakar and Mohammad Mohan Kittu were not credible witnesses.

[39] Before the Industrial Court, as well as before us, the respondent took the position that in view of the fact that the Sessions Court (upheld by the High Court and the Court of Appeal) had acquitted the respondent and had made a finding that Zulfakar and Mohammad Mohan Kittu were not credible witnesses, the Industrial Court ought to be bound, if not guided, by those findings and should refrain from arriving at any contrary findings on those same issues.

[40] We reproduce below the submission of the respondent's counsel submitted before the Industrial Court:

> The Sessions Court Judge dealt with issue like whether the Claimant was in a position to terminate COW-3's contracts, whether there was bad blood between COW-1 and the Claimant, whether the Claimant accepted illegal gratification, whether the evidence against the Claimant was 'set up', etc. The Sessions Judge then made findings on these en route to acquitting the Claimant. His decision was affirmed by the High Court and unanimously by the Court of Appeal.
>
> We submit that the Industrial Court ought to be persuaded if not guided by those findings and should refrain from arriving at any contrary findings on those same issues because:
>
> > ... It would be out of harmony with all authority to have two contrary decisions between the same parties on the same issue obtained by different procedures as it were, on parallel courses which never met or could meet ...
>
> *Tan Chong & Sons Motor Co. Sdn. Bhd. v. Abdul Razak a/l Ibrahim & 2 Ors* [1995]1 ILR 415.

[41] In our judgment, we agree with the submission of the learned counsel for the appellant that the Industrial Court had correctly stated the law that (i) it was not bound by the findings of the Sessions Court, and that (ii) the proceedings in the Sessions Court was irrelevant to the Industrial Court proceedings. Indeed this is the approach adopted in the following Industrial Court cases:

(i) *Malaysian Airline System Bhd v. Airline Workers' Union, Sarawak* [1983] 1 ILR 238;

(ii) *Taiko Plantations Sdn Bhd, Negeri Sembilan v. Ragawan Raman Nair & Anor* [1994] 2 ILR 75; and

[42] The proceedings before the Sessions Court is criminal in nature and the applicable standard of proof is that of beyond reasonable doubt, that is to say, different from that before the Industrial Court which is on a balance of probabilities. Moreover, it is our view that the approach taken by the Industrial Court is consistent with the exercise of its function as prescribed by the Industrial Relations Act 1967 in having to determine for itself, in accordance with its own legal standards as prescribed by s. 30(5) of the Act, whether the appellant had established a valid reason for the respondent's

dismissal. We, therefore, hold that the Industrial Court correctly held that (to quote the relevant passage in the award),

> There is plethora of authorities to show that the Industrial Court is not bound by the findings of a Criminal Court and it should make its own finding based on evidence adduced in the Court independent of the result in a Court of Law.
>
> Based on all the authorities stated above, it is obvious that the proceedings in the Sessions Court are irrelevant to this instant case. This Court is obliged to come to its own decision based on the evidence adduced in this Court independent from the findings of the Sessions Court.

[43] The learned High Court Judge, however, found this approach as adopted by the Industrial Court as being unacceptable. With respect, it is our view that the learned High Court Judge in criticising this approach had overlooked the fact that if the Industrial Court had considered itself bound by the findings of the Sessions Court or guided by those findings then it would have failed to discharge its function, that is, making its own findings based on the evidence adduced before it and in compliance with s. 30(5). Whatever were the findings of the Sessions Court, they could not, as a matter of law, be taken to be the parameters within which the Industrial Court is called upon to exercise its functions.

[Appeal allowed with costs; the order of the High Court is set aside and the award of the Industrial Court is restored.]